

DECLARATION OF KIRSTIE LEBRON

I, Kirstie Lebron, do hereby declare as follows:

1. I am over eighteen years of age and am competent to testify regarding the matters stated in this declaration. I give this declaration voluntarily. I have not been promised any benefit, been coerced, or been threatened in any manner in exchange for the testimony in this declaration.

2. I am currently employed by Saks Fifth Avenue ("Saks"), located at 611 Fifth Avenue, New York, New York 10022 as a commission sales associate. I began working at Saks in or about the winter of 2009 as a seasonal employee in the Men's department. In or about the spring of 2010, I was hired by Saks to be a part-time commission sales associate in the intimate apparel department. In March of 2015, I transferred to the Designer Collections for Women department. I have been working in that position ever since.

3. A commission sales associate at Saks is responsible for making sales of store merchandise throughout the store and is incentivized to do so by being paid a percentage of the sales price as a commission. Each department within Saks carries a different commission rate associated with its products. There is a wide range of commissions, for instance, cosmetics carries a 9% commission, shoes carries 10%. Sometimes, specific designer brands will carry increased commissions for a short amount of time. One example of this was when products by the designer Trish McEvoy carried between 20% to 30% commission for a short time. My previous department, intimate apparel, carries a relatively low commission rate of between 5% to 7% commission.

4. There are different types of commission sales associates at Saks. One type is called a "draw associate." Throughout my time at Saks, I have been a "draw associate" which

is also known as a “commission vs. hourly associate.” I have always been paid as a draw associate at Saks.

5. Saks has an internal system run through what is called “Oracle” in which each sales associate can see what department each product you sold was in. Each amount of sale is associated with a code in the system and each code is associated with a commission amount. It is very clear what the commission structure for each product is in Oracle.

6. It is very clear how returns affect commissions at Saks. For instance because the amount of the commission originally received on the returned merchandise is the amount that comes out of a sales associate’s commission when the merchandise is returned. That amount is clearly noted as a return in the Oracle system and I cannot imagine a more simplistic way to show how returns affect commissions.

7. Saks calculates commissions based on when any returns are processed. Thus, I never know exactly what my commission is for a given week until my sales, my commissions on those sales, along with any returns for that week, are calculated at the end of that period.

8. As soon as you begin employment as a sales associate at Saks, you are provided with a copy of a written commission plan that contained the terms of the draw associate commission system. I also know that every commission sales associate receives the written commission plan, and every commission sales associate that I have spoken to about the plan knows what it says.

9. Each draw associate receives a weekly “draw” which is a set amount of pay under which the associate never drops below. If the draw associate’s commission is enough to cover the “draw” amount, the associate’s commission is short of the “draw” amount. If the

draw associate fails to accumulate enough commission to cover the “draw” amount, the associate is considered to be “in arrears.” Future commission amounts are applied to the subsequent “draw” amount, and any amount of “arrears.”

10. From the moment that it was provided to me, I read and understood that, under the draw commission system, I needed to make enough commission sales to meet my weekly “draw” amount. It is generally understood among the store that you have to make about \$6,000.00 in sales per week in order to meet your draw amount. This is not an exact number but every sales associate can see where they stand in terms of sales, and in terms of what they need to meet their draw if they simply go to Saks’ internal computer system. That system is available at every point of sale (“POS”, also known as cash registers) in the store.

11. When I received the commission sales plan, I also read and understood that if I did not cover my “draw” amount, I would be considered to be “in arrears” and that future commission amounts would be applied to subsequent “draw” amounts and any “arrears” amount I had accumulated. This was easy for me to understand because it is clearly provided for in the written commission plan.

12. From the moment that it was provided to me at the time of hire, I also read and understood that the commission paid under the any of Saks’ commission plans is reduced by merchandise that is returned. Specifically, I understood from the time I was hired that, when an item is returned and Saks is able to identify the original sales associate that sold the item, the commission for the sale would be deducted from that associate’s accumulated commissions at the same rate the original commission was paid.

13. It is virtually impossible for a returned product to be counted against the commission of an associate who did not make the sale. I check my sales and return data often

and I have never had a return go against my commission for a product I did not sell. I also have never heard of a return going against another sales associate's commissions for a product that sales associate did not sell.

14. When Saks processes returns, there are several different ways to identify the sale and the sales associate who made it. For instance, Saks can look up the name of the customer, or lookup the credit card and when all else fails, the return can be processed by Saks' Client Services Department which can do an even deeper search for the sale. If a sale cannot be identified, the store processes the return at the lowest selling price and whatever commission was awarded to the sales associate originally is not deducted from anyone's commission.

15. The number of sales made by a sales associate which are returned depends on many variables. For instance, some products are less likely to be returned than others. One example are the products in my department, intimate apparel which are less likely to be returned. It is also my personal experience that products sold in other departments, such as custom suits, and cosmetics, are also less likely to be returned. There are also times of the year when more returns are processed more than others such as January (after Christmas), and about two weeks after Valentine's Day. There are not many returns at all in the men's department as compared with the rest of the store.

16. When I sell, I think about what products are least likely to be returned and those products with a higher commission rate. I try to sell more of these products.

17. Part of my ability to sell at Saks is based on my ability to build relationships. For instance, I was able to continue a relationship with clients that I routinely serviced at another store I worked at. I spend part of my time on the floor at Saks contacting

these clients about new products we have in the store and if they agree to buy, I process sales and send the products to them.

18. I make sure I reach out to any client I develop a relationship with because it helps me make more commissions. You get what you put into this job and it is up to each sales associate to ensure they earn more commission. Each sales associate is in control of their own destiny in terms of commissions earned.

19. As a commission sales associate, I am required to clock in and out for work every day at a cash register in the store. I clock in and out at the beginning and end of my shift and meal periods.

20. When I arrive at Saks for work and when I return from any meal break, I always clock in when I am back on the floor ready to work.

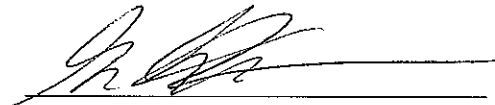
21. When my shift ends and when I leave for any meal break, I always clock out.

22. During my time at Saks, I cannot remember ever making a sale or conducting work after I clock myself out at the end of my shift or at the start of my meal break. I have also never been ordered, pressured, or incentivized in any way by a Saks supervisor to make a sale after I clock myself out at the end of my shift or at the start of my meal break.

23. Saks gives sales associates the opportunity to attend various vendor shows throughout the workday. Most vendor shows are held in the morning and occur in lieu of Saks' morning meeting. Thus, all sales associates in attendance are already clocked in for the morning shows. These shows last 15-20 minutes at most. When I was scheduled in the morning I would attend these shows because I like to receive more information about products in order to help me sell. I have always been on-the-clock for these shows.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this day of *March*, 30th, 2015 in New York, New York.


KIRSTIE LEBRON